

Wayne E. Borgeest (WB-3034)
Joan M. Gilbride (JG-6238)
Ann Marie Collins (AC-7125)
Robert A. Benjamin (RB-9891)
KAUFMAN BERGEEST & RYAN LLP
200 Summit Lake Drive
Valhalla, New York 10595
(914) 741-6100 (Telephone)
(914) 741-0025 (Facsimile)
wborgeest@kbrlaw.com
jgilbride@kbrlaw.com
acollins@kbrlaw.com
rbenjamin@kbrlaw.com

Attorneys for Axis Reinsurance Company

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
In re	:	Chapter 11
	:	
REFCO, INC., et al.,	:	Case No. 05-60006 (RDD)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Plaintiff,	:	
	:	Adv. Proc. No. 07-01712-rdd
v.	:	
	:	
PHILLIP R. BENNETT, et al.,	:	
	:	
Defendants.	:	
-----	X	
	:	
TONE N. GRANT, et al.,	:	
	:	
Plaintiffs,	:	
	:	Adv. Proc. No. 07-2005-rdd
v.	:	
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Defendant.	::	
-----	X	

-----	X	
LEO R. BREITMAN, et al.,	:	
	:	
Plaintiffs,	:	
	:	Adv. Proc. No. 07-2032-rdd
v.	:	
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Defendant.	:	
-----	X	

**DESIGNATION OF ITEMS IN RECORD ON
APPEAL AND STATEMENT OF ISSUE PRESENTED**

Axis Reinsurance Company ("Axis"), the Appellant on appeal, by counsel, hereby respectfully designates the following items to be included in the record on appeal, all of which are submitted herewith as Exhibits to the annexed Declaration of Ann Marie Collins, and herein sets forth a statement of the issue it intends to present on appeal:

ITEMS DESIGNATED

1. Axis Reinsurance Company Securexcess Policy RNN 506300 (the "Axis Policy"), attached to Declaration of Ann Marie Collins (annexed hereto) ("Collins Dec.") as Exhibit A.
2. U.S. Specialty Insurance Company Directors, Officers and Corporate Liability Insurance Policy 24-MGU-05-A10821, attached to Collins Dec. as Exh. B.
3. Directors and Corporate Liability Insurance Policy No. 874-91-08, issued to WorldCom by National Union Fire Insurance Company of Pittsburgh, Pa, attached to Collins Dec. as Exhibit C.
4. The Adversary Action Complaint filed by Axis on May 23, 2007, attached to Collins Dec. as Exh. D (without exhibits).
5. Memorandum in Support of Defendants Klejna, Murphy, Sexton, Sherer and Silverman's Motion to Require Axis Reinsurance Company to Pay Defense Costs and for Relief

from the Automatic Stay, filed July 13, 2007, attached to Collins Dec. as Exh. E (without exhibits).

6. Objection of Axis Reinsurance Company to Defendants' Application for a Preliminary Injunction Ordering Advancement of Defense Costs, filed August 13, 2007, attached to Collins Dec. at Exh. F (without exhibits).

7. Reply of Defendants Klejna, Murphy, Sexton, Sherer and Silverman in Support of Their Motion to Require Axis Reinsurance Company to Pay Defense Costs and for Relief from the Automatic Stay, filed August 27, 2007, attached to Collins Dec. as Exh. G.

8. The Answer and Counterclaims of Phillip Silverman, filed in the United States Bankruptcy Court, Southern District of New York, on July 13, 2007, attached to Collins Dec. as Exh. H.

9. The Answer and Counterclaims of Sexton and Sherer, filed in the United States Bankruptcy Court, Southern District of New York, on July 13, 2007, attached to Collins Dec. as Exh. I.

10. The Amended Answer and Counterclaims of Klejna and Murphy, filed in the United States Bankruptcy Court, Southern District of New York, on July 31, 2007, attached to Collins Dec. as Exh. J.

11. The transcript of the August 30, 2007 oral argument on the Application for a Preliminary Injunction Ordering Advancement of Defense Costs and Motion to Dismiss, attached to Collins Dec. as Exh. K.

12. The August 31, 2007 Order of Judge Robert D. Drain granting Defendants' Application for a Preliminary Injunction Ordering Advancement of Defense Costs by Axis, attached to Collins Dec. as Exh. L.

13. The August 31, 2007 Order of Judge Robert D. Drain granting Defendants' Motion to Dismiss Axis's complaint, attached to Collins Dec. as Exh. M

14. The Form 8-K filed by Refco, Inc. (signed by Movant Klejna) with the United States Securities and Exchange Commission on October 11, 2005, attached to Collins Dec. as Exh. N (with exhibits).

15. The March 6, 2006 letter from Wayne E. Borgeest, Esq. to Pam Sylwestrzak, attached to Collins Dec. as Exh. O.

16. The Warranty Letter signed by Bennett on behalf of all insureds under the Axis Policy on January 21, 2005, attached to Collins Dec. as Exh. P.

17. Complaint of Tone Grant, Robert Trosten and Phillip Bennet, filed September 4, 2007, attached to Collins Dec. as Exhibit Q.

18. Axis Reinsurance Company's Answer and Counterclaim to Complaint of Tone Grant, Robert Trosten and Phillip Bennet, attached to Collins Dec. as Exhibit R.

19. Motion of Plaintiff Tone Grant, Robert Trosten and Phillip Bennett to Require Axis to Pay Their Defense costs in Underlying Actions and for Relief from the Automatic Stay, dated September 5, 2007, attached to Collins Dec. as Exhibit S.

20. Axis's Memorandum in Opposition to Indicted Plaintiffs' Application for a Preliminary Injunction Ordering Payment of Defense Costs Prior to an Adjudication of Coverage, dated September 9, 2007, attached to Collins Dec. as Exhibit T.

21. Transcript of September 11, 2007 Oral Argument on Motion of Plaintiffs Grant, Trosten and Bennett to Require Axis to Pay Their Defense Costs in Underlying Actions, attached to Collins Dec. as Exhibit U.

22. Order dated September 12, 2007 granting, in part, Motion to Require Axis to Pay Officer and Director Defense Costs and for Relief from the Automatic Stay, attached to Collins Dec. as Exhibit V.

23. Director Plaintiffs' Defendants' Motion to Compel Axis Reinsurance Company to Pay Defense Costs, dated, September 17, 2007, attached to Collins Dec. as Exhibit W.

24. Complaint of Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott Jaeckel, Thomas H. Lee, Ronald L. O'Kelley and Scott A. Schoen, filed September 17, 2007, attached to Collins Dec. as Exhibit X.

25. Answer of Axis Reinsurance Company to Complaint of Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott Jaeckel, Thomas H. Lee, Ronald L. O'Kelley and Scott A. Schoen, attached to Collins Dec. as Exhibit Y.

26. Memorandum of Law in Support of Defendants Klejna, Sexton, Sherer and Silverman's Motion for Summary Judgment to Require Axis Reinsurance Company to Advance Defense Costs in the Underlying Litigations, filed September 25, 2007, attached to Collins Dec. as Exh. Z (without exhibits).

27. Murphy's Motion for Summary Judgment to Require Axis Reinsurance Company to Advance Defense Costs in the Underlying Litigations, filed September 25, 2007, attached to Collins Dec. as Exh. AA (without exhibits).

28. Memorandum of Tone Grant, Robert Trosten and Phillip Bennett in Support of Their Motion for Summary Judgment to Require Axis to Advance Defense costs in the Underlying Litigations, attached to Collins Dec. as Exhibit BB.

29. Director Plaintiffs' Motion for Summary Judgment, attached to Collins Dec. as Exhibit CC.

30. Axis Reinsurance Company's Memorandum in Opposition to Defendants' Motion for Summary Judgment, filed October 4, 2007, attached to Collins Dec. as Exh. DD (without exhibits).

31. Director Plaintiffs' Reply to Axis Reinsurance Company's Opposition to Summary Judgment Motion, filed October 12, 2007, attached to Collins Dec. at Exhibit EE.

32. Reply Memorandum of Plaintiffs Tone Grant, Robert Trosten and Phillip Bennett in Support of their Motion for Summary Judgment to Require Axis Reinsurance Company to

Advance Defense Costs in the Underlying Litigations, filed October 10, 2007, attached to Collins Dec. as Exh. FF.

33. Reply Memorandum of Defendants Klejna, Sexton, Sherer and Silverman in Support of their Motion for Summary Judgment to Require Axis Reinsurance Company to Advance Defense Costs in the Underlying Litigations, filed October 10, 2007, attached to Collins Dec. as Exh. GG.

34. The transcript of October 12, 2007 oral argument on the Application for an Injunction Ordering Advancement of Defense Costs, attached to Collins Dec. as Exh. HH.

35. October 10, 2007 letter from Joan Gilbride to Judge Robert D. Drain enclosing Carlin Equities Corp. v. Houston Cas. Co., attached to Collins Dec. as Exhibit II.

36. October 19, 2007 Order granting Motions for Summary Judgment, attached to Collins Dec. as Exhibit JJ.

ISSUE PRESENTED

1. Was the Bankruptcy Court incorrect in granting Defendants' Motions for Summary Judgment to Require Axis Reinsurance Company to Advance Defense Costs in the Underlying Litigation, when the Axis Policy specifically states that Axis will only pay *covered* Defense Costs, and there is an issue at present as to whether any of the loss sought by the Appellees, including Defense Costs, is covered under the Axis Policy?

Dated: October 26, 2007

Signed: _____



Wayne E. Borgeest (WB 3034)
Joan M. Gilbride (JG-6238)
Ann Marie Collins (AC-7125)
Robert A. Benjamin (RB-9891)
Kaufman Borgeest & Ryan LLP
Attorneys for Plaintiff/Appellant
Axis Reinsurance Company
200 Summit Lake Drive
Valhalla, New York 10595
(914) 741-6100 (Telephone)

(914) 761-0025 (Facsimile)